

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.R No.71 of 2007

Decided on : July 23, 2007

Vijay Kumar

....Petitioner.

VERSUS

State of H.P.

....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner : Mr. Sanjeev Bhushan, Advocate.

For the Respondent : Mr. Ashutosh Burathoki, Additional Advocate General.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. A request was made by the Police to the Judicial Magistrate 1st Class, Mandi, seeking permission to take photographs of the revision petitioner for the purpose of comparing the same with the photograph of a man appearing in an obscene movie clipping. The application was made under Section 5 of the Identification of Prisoners' Act. Admittedly, the revision petitioner had been arrested in connection with a case on the complaint of a woman and was in custody as an undertrial when the application was moved. The Magistrate dismissed the application of the police. State went in revision to the Sessions Court. Learned Sessions Judge has allowed the revision petition and consequently the order of the Magistrate has been set aside and the prayer of the police for taking photographs of the revision petitioner granted.

Whether the reporters of the local papers may be allowed to see the Judgment?

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3. It is not in dispute that the provision of Section 5 of the Identification of Prisoners' Act is applicable to the fact of the case on all fours. However, the learned counsel has submitted that no rules having been framed by the State Government, as per requirement of Section 4 of the said Act, the provision of Section 5 is inapplicable. Section 4 pertains to the prescription of rules by the State Government only with regard to the taking of measurements of the person and not the taking of his photographs. The procedure and manner of taking the photographs is given in Section 5 itself. Hence, the submission is rejected.

4. Next submission made on behalf of the revision petitioner is that Section 5 is *ultra vires* of Article 20(3) of the Constitution of India. A Constitution Bench of Hon'ble Supreme Court in *State of Bombay versus Kathi Kalu Oghad*, AIR 1861 Supreme Court 1808 has held that the bar of Clause 3 of Article 20 of the Constitution of India is applicable where someone accused of an offence is sought to be compelled to make a statement against himself either by a word of mouth or in writing. Taking of photographs of an accused does not amount to his making a statement against himself or becoming a witness against himself, in view of the aforesaid judgment of the Constitution Bench of the Hon'ble Supreme Court.

5. For the foregoing reasons, the revision petition is dismissed.

Cr.MPs No.250 & 251 of 2007

Infructuous. Interim order dated 11.6.2007, passed on Cr.MP No.250 of 2007, stands vacated.

July 23, 2007^(sd)

(Surjit Singh), J.